

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SUZANNE CAPORICCI, by her attorney-in-fact, DENISE CAPORICCI, MARY DACHILLE, by her attorney-in-fact, WILLIAM DACHILLE, and GREGORY TOBIN, individually and on behalf of all other similarly situated,

Plaintiffs,  
-against-

**MEMORANDUM AND ORDER**  
15-CV-3559 (FB) (LB)

SHARON DEVINE, as Executive Deputy Commissioner of the Office of Temporary and Disability Assistance of the New York State Department of Family Assistance, HOWARD ZUCKER, M.D., as Commissioner of the New York State Department of Health, JOHN E. IMHOF, as Commissioner of the Nassau County Department of Social Services, and STEVEN BANKS, as Commissioner of the New York City Human Resources Administration,

Defendants.

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*Appearances:*

*For the Plaintiffs:*  
PETER VOLLMER, ESQ.  
Jericho Atrium  
500 N. Broadway  
Jericho, NY 11753

*For the Defendants:*  
ROBERT L. KRAFT, ESQ.  
Office of the Attorney General  
120 Broadway  
New York, NY 10271

**BLOCK, Senior District Judge:**

Plaintiffs Suzanne Caporicci (“Caporicci”), Mary Dachille (“Dachille”) and

Gregory Tobin (“Tobin”) (collectively, “Plaintiffs”) seek a preliminary injunction temporarily adjourning fair hearings at which they plan to contest adverse determinations regarding their receipt of benefits under New York State public programs.<sup>1</sup> Plaintiffs seek this relief pending resolution of a separate, anticipated preliminary injunction request that would require Defendants to provide them with copies of policy materials they have requested for use in these hearings.

Tobin’s hearing is scheduled for Tuesday, June 30, 2015. Caporicci and Dachille’s hearings are scheduled for Tuesday, July 7, 2015. Plaintiffs have known about these pending hearings – and the fact that they had not received the requested policy materials – since at least the middle of May 2015. Nevertheless, Plaintiffs waited until Friday, June 19, 2015 – the eve of Caporicci and Dachille’s original hearing dates – to file this action.<sup>2</sup> Plaintiffs’ delay undermines the necessity of a preliminary injunction. *See Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985) (“Preliminary injunctions are generally granted under the theory that there is an

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<sup>1</sup> On June 19, 2015, Plaintiffs made an *ex parte* application for a Temporary Restraining Order (“TRO”). On June 24, 2015, the Court held a hearing on Plaintiffs’ request for injunctive relief at which counsel for Defendants appeared. Accordingly, the Court will convert Plaintiffs’ TRO motion into an application for a preliminary injunction. *See Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A.*, 320 F.3d 1205, 1210 n.3 (11th Cir. 2003) (“The district court may convert a hearing for a temporary restraining order into a hearing for a preliminary injunction so long as the adverse party had notice of the hearing.”).

<sup>2</sup> When Plaintiffs filed this case, both Caporicci and Dachille’s hearings were scheduled for Monday, June 22, 2015. During the June 24, 2015 hearing, counsel represented that their hearings were adjourned until Tuesday, July 7, 2015.

urgent need for speedy action to protect the plaintiffs' rights. Delay in seeking enforcement of those rights, however, tends to indicate at least a reduced need for such drastic, speedy action.”). Moreover, by waiting until the eleventh hour to bring this action, Plaintiffs essentially created the exigency which they argue entitles them to emergency relief. *See Nat'l Council of Arab Ams. v. City of New York*, 331 F. Supp. 2d 258, 265 (S.D.N.Y. 2004) (denying preliminary injunction motion where “[t]o a significant degree, the emergency created by th[e] preliminary injunction application [was] of Plaintiffs' making”). Under these circumstances, the Court declines to grant Plaintiffs' application for preliminary injunctive relief.

### **III.**

For the foregoing reasons, Plaintiffs' motion for a preliminary injunction is denied.

### **SO ORDERED.**

Frederic Block  
FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
June 26, 2015